

## **DECLARATION OF EMERGENCY**

Department of Environmental Quality  
Office of Environmental Assessment

8-Hour Ambient Ozone Standard and Nonattainment New Source Review  
(LAC 33:III.111.504, 607, 711, 2201, and 2202) (AQ253E)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allows the Department of Environmental Quality to use emergency procedures to establish rules, and under the authority of R.S. 30:2011, the secretary of the department hereby finds that imminent peril to the public welfare exists and declares that an emergency action is necessary to implement rules concerning the revised primary and secondary National Ambient Air Quality Standards (NAAQS) for ozone and transitional provisions for nonattainment new source review under the revised standard.

On April 30, 2004, EPA enacted 8-hour ozone NAAQS classifications, effective June 15, 2004 (69 FR 23858). The revised 8-hour NAAQS is more protective than the existing 1-hour ozone NAAQS. In order to transition from the existing 1-hour standard to the new 8-hour standard, EPA adopted a rule for implementation of the 8-hour ozone NAAQS-Phase 1 (the "Phase 1 Implementation Rule") on April 30, 2004 (69 FR 23951). In the Phase 1 Implementation Rule, EPA revoked the 1-hour standard in full, including the associated designations and classifications, effective on June 15, 2005.

Litigation by a number of stakeholders pending in the United States Court of Appeals for the District of Columbia Circuit challenged various aspects of the Phase 1 Implementation Rule, resulting in EPA's agreement to reconsider several portions of the rule through renewed notice and public comment. EPA only recently made final decisions on reconsideration, thus clearing the way for effectiveness of the Phase 1 Implementation Rule (70 FR 30592, May 26, 2005). As a result, Louisiana is required to adopt the 8-hour revised standard and measures to implement such standard. This Emergency Rule is necessary to address two of the most immediate aspects of implementation: 1) revision of LAC 33:III.711 to replace the 1-hour primary ambient air quality standard with the 8-hour standard; and 2) revision of nonattainment new source review provisions for parishes that were reclassified from severe under the 1-hour standard to marginal under the 8-hour standard (parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge). Because such parishes are still in nonattainment and because EPA has not yet developed guidance for nonattainment new source review under the 8-hour standard, the department is adopting measures to ensure that these parishes continue to make progress toward attainment while still accommodating growth. Regulatory changes will also delete references to the 1-hour standard and substitute the 8-hour standard, and take other actions to transition to the 8-hour standard. The attainment date for the Baton Rouge area under the 8-hour standard is June 15, 2007. Failure to adopt this rule on an emergency basis (i.e., without the delays for public notice and comment) would result in imminent peril to the public welfare as the department would not have the authority to enforce the 8-hour standard.

This Emergency Rule is effective on June 15, 2005, and shall remain in effect for a maximum of 120 days or until a final rule is promulgated, whichever occurs first. For more information concerning AQ253E, you may contact the Regulation Development Section at (225) 219-3550.

This Emergency Rule is available on the Internet at [www.deq.louisiana.gov](http://www.deq.louisiana.gov) under Rules and Regulations, and is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374.

Adopted this 10th day of June, 2005.

Mike D. McDaniel, Ph.D.  
Secretary